

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEITH HAINES and	:	CIVIL ACTION
VALARIE HAINES	:	
	:	
v.	:	
	:	
POLYMER DYNAMICS, INC. and	:	
WILLIAM PEOPLES	:	NO. 03-4088

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: May 15, 2007

I. Introduction

Keith and Valarie Haines brought this action under § 1132 of ERISA, 29 U.S.C. § 1001, *et seq.*, and state tort law to recover amounts they claim are due to them under the employee welfare benefit plan administered by Keith Haines's employer, Polymer Dynamics, Inc. ("PDI"). Both PDI and Defendant William Peoples, PDI's CEO and sole shareholder, are sued as plan fiduciaries. For the reasons set forth below, I will enter judgment in favor of Plaintiffs in the amount of \$6,768.91 plus reasonable costs and attorney's fees.

II. Findings of Fact

The background to this case is not complex. Several health insurance plans put into place by PDI for the benefit of its employees were cancelled for non-payment, one after the other. For this reason, a number of medical bills which Plaintiffs expected would be covered by insurance, were not paid. Moreover, PDI continued to deduct money for insurance from Mr. Haines's paychecks even after it terminated its ERISA plan. This is admitted by the Defendants. Exhibit D-26; Trial Transcript, Testimony of Deborah Kocher, at 82, 83, 93. More complex is the determination of the amount due to Plaintiffs.

A. Haines's History at PDI

Keith Haines was employed by PDI as a computer programmer between February, 1995, and May 23, 2002. Trial Transcript ("Transcript"), Keith Haines testimony, at 14, 30. The Defendants do not contest Plaintiffs' allegation that, at all times during this period, PDI was an employer which established, maintained, and administered its own employee welfare benefit plan as defined by ERISA. Plaintiff's Complaint at ¶ 11, Defendants' Answer at ¶ 11. Haines was not required to contribute to his own insurance, but he had an amount deducted from his paycheck toward his wife's coverage. Transcript, Haines Testimony at 15.

Eventually, PDI began to have trouble maintaining a health insurance plan. In October, 2000, PDI informed its employees that it was terminating its relationship with Aetna US Healthcare. Exhibit P-3; Transcript, Haines' Testimony at 16-17. Instead, PDI would provide several coverage options through Blue Cross/Blue Shield. Id.

On November 1, 2000, PDI notified its employees that it would be self-insured for that month, and that Blue Cross/Blue Shield coverage would begin in December. Haines Testimony at 17; Exhibit P-4. However, in March, 2001, Blue Cross/Blue Shield cancelled PDI's group policy effective retroactive to December 1, 2000, because of PDI's failure to pay policy premiums. P-1 at ¶ 18. In May, 2001, PDI obtained self-funded group insurance administered by Insurance Administrators of America ("IAA"). Id. at ¶ 19.

By letter dated October 29, 2001, IAA notified its plan participants, including Haines, that PDI had not funded its group health plan. Exhibit P-5; Haines Testimony at 20. The letter stated: "We suggest that you obtain health insurance through different means." Id. A second letter from IAA, dated January 15, 2002, informed the participants that IAA was terminating its

relationship with PDI. Exhibit P-6. Again, IAA wrote: “It is recommended that, if you have not done so already, you obtain health insurance through a different means.” Id.

Further, PDI never made contributions to a dental plan which it had offered its employees. Complaint at ¶ 27. Nevertheless, between October 22, 2000 and June 2, 2001, PDI took payroll deductions out of Haines’s paychecks for dental coverage. Complaint at 28; Exhibit P-1 at ¶¶ 26-27.

On November 16, 2001, even before IAA’s second letter was sent out, Deborah Kocher, PDI’s Vice-President of Administration, and an associate of Mr. Peoples for over thirty years, issued a memorandum to all employees. Exhibit P-1; Kocher Testimony at 76-78. It was headed IMPORTANT ANNOUNCEMENT, and stated, in relevant part:

Many of you have already received cancellation notices with respect to your health insurance. The Company will maintain responsibility of [*sic* “for”] these medical benefits, to the extent identified in the health benefit manual, until November 30, 2001. At that time, the Company will NO LONGER supply medical benefits to any of its employees. The cost of medical insurance has become so excessive as to make it impossible to maintain coverage for this large of an employee base.

It is important that each of you who wish to maintain medical coverage immediately begin to seek alternative solutions at your own expense.

Exhibit D-1. (Emphasis in original).

Kocher testified that a copy of this notice was placed in the paycheck envelope of every employee on Friday, November 16, 2001. Kocher Testimony at 78. Copies were also placed in every employee mailbox. Id. Kocher was directly responsible for instructing PDI employees to put the notices in the envelopes and paychecks. Id. She testified: “When I wrote that memo I actually physically stood at the copy machine myself, ran off the copies, gave them to the office

manager so she could get with the payroll clerk and they could put them in the envelopes.”

Kocher Testimony at 107.

Haines denied receiving the November 16, 2001, notice. Haines Testimony at 29-30, 44. He also testified that, in the open workspace he shared with seventeen other professional co-workers, he never heard that PDI would no longer provide health insurance. Id. at 37-38; 45-46. Nevertheless, Haines also testified that he did at times receive company mail. Id. at 17, 45.

Haines also testified that if there had been a meeting on November 16, 2001, he would have attended, if he had been present at work. Id. at 38-39. A printout from PDI’s time and attendance system showed that Haines was, in fact, at work on November 16, 2001. Id. at 39-40; Exhibit D-23. I will credit Ms. Kocher’s testimony that the printout showed the year 2001, although there is no year designation on it. Kocher Testimony at 104-105.

Ms. Kocher also testified that no other employee told her that he or she did not get notice in November, 2001, that PDI was terminating its health insurance program. Id. at 111. She said that, if there had been such a claim, she would have learned of it. Id.

On the basis of the testimony summarized above, I conclude as a matter of fact that Mr. Haines was actually notified on November 16, 2001, that all health benefits provided by PDI would terminate as of November 30, 2001.

B. Peoples’s Status As An ERISA Plan Fiduciary

In his earlier pleadings, Defendant William Peoples, who chose to represent himself *pro se*, denied that he was a fiduciary with respect to PDI’s health benefits plan. At trial, however, this colloquy occurred:

COURT: Mr. Peoples, do you – are you going to continue to press your argument that you’re not a fiduciary in this situation?

MR. PEOPLES: I am pressing the argument that I was the fiduciary as W.J. Peoples, president of Polymer Dynamics. And it was in that role –

THE COURT: Okay. Well that’s the same as you.

MR. PEOPLES: – and in that role I was anticipating I would be protected by the corporate shield. That I was not functioning as an individual, William Peoples.

THE COURT: Well, let me correct your understanding of that.

MR. PEOPLES: And I have been corrected –

THE COURT: Good.

MR. PEOPLES: – by reading the statute.

THE COURT: Because a fiduciary – under ERISA fiduciaries have had personal liability notwithstanding that they all function as fiduciaries in their role as employees. So, that’s not going to help you.

MR. PEOPLES: I understand that.

Transcript at 10-11.

C. The Bills

Plaintiffs provided as an exhibit in this case a compilation of every bill they claim should have been, but was not, covered by insurance. Exhibit P-8. They also provided a letter from Mr. Peoples on PDI stationery, dated January 4, 2006, listing “charged amounts” and “negotiated amounts” for 26 additional bills. Exhibit P-9.¹

Defendants have challenged some of these bills on the basis that service was provided on dates after the November 30, 2001, cutoff. They have said that other bills, while incurred within

¹Out of the 27 bills listed, one was a duplicate of a bill included in P-8. I am convinced that this duplication was accidental and also understandable. I urge counsel for Plaintiff not to fire his paralegal, as he said he would do if any duplication was found between the exhibits. Transcript at 33.

the covered period, would not have been paid under the then-existing policies. Finally, they point to instances where Plaintiffs have added up cumulatively certain amounts which were simply carried over from one statement to the next. For this reason, I must discuss most of the bills individually, in the section of this decision following my explanation of the legal standards.

Mr. Haines admitted at trial that he never paid most of these bills, and, moreover, that he is not aware that of any action to collect money from him, or any impairment to his credit rating. Haines Testimony at 24-26. Out of all of the bills, Mr. Haines claimed that he personally paid a \$656 bill from Macungie Medical Group, because he received a phone call telling him that his wife could not be treated that day until the bill was paid. *Id.* at 26. Otherwise, Haines testified that he paid only a \$19.40 bill from Medical Imaging of Lehigh Valley and a \$32 bill from Health Network Labs. *Id.* at 26, 28-29. As a factual finding, I credit Mr. Haines's testimony as to what he paid.

III. Legal Standards

A. ERISA

An ERISA plan beneficiary may bring an action against plan fiduciaries for the breach of their duties, in order to recover benefits due him under the terms of his plan. 29 U.S.C. §1132(1)(1)(B). The elements of this cause of action are: (1) the defendant's status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of that misrepresentation; and (4) detrimental reliance by the plaintiff on the misrepresentation. *Daniels v. Thomas & Betts Corp.*, 263 F.3d 66, 73 (3d Cir. 2001). An award of reasonable attorney's fees and costs is available to a prevailing plaintiff in the court's discretion. 29 U.S.C. § 1132(g)(1).

B. The State Tort Causes Of Action

Plaintiffs have also asserted causes of action under Pennsylvania tort law for fraudulent misrepresentation and negligent misrepresentation. To establish a claim for fraudulent misrepresentation, a plaintiff must prove (1) a misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker that the recipient will thereby be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damage to the recipient as the proximate result. Petruska v. Gannon University, 462 F.3d 294, 310 (3d Cir. 2006), citing Martin v. Lancaster Battery Co., 530 Pa. 11, 19 (1992).

The elements of negligent misrepresentation differ from intentional misrepresentation in that the misrepresentation must concern a material fact and the speaker need not know his or her words are untrue, but must have failed to make a reasonable investigation of the truth of these words. See Dinger v. Allfirst Financial, Inc., 82 Fed. Appx. 261, 266 (3d Cir. 2003), quoting Bortz v. Noon, 556 Pa. 489 (1999).

IV. Conclusions of Law

I conclude as a matter of law that the health insurance PDI agreed to provide to Mr. Haines constituted an Employee Welfare Benefit Plan within the meaning of ERISA. I further conclude that, as he conceded at trial, William Peoples was a fiduciary with respect to this plan. PDI, too, was a fiduciary with respect to the plan.

I further conclude that, between October, 2000, and November 16, 2001, Defendants falsely represented to Plaintiffs that they were protected by medical and dental insurance coverage. At the same time, each Defendant knew (a) no premiums were paid for Blue Cross/Blue Shield insurance; (b) the IAA self-insured plan was never funded and (c) no premiums had been paid to the dental insurer.

Thus, to the extent that Plaintiffs have shown expenditures for medical services provided before November 30, 2001, which would have been paid by the insurance purportedly held by PDI at the time the bill was incurred, I conclude as a matter of law that both PDI and Mr. Peoples are liable for the breach of their duties under ERISA and for a fraudulent misrepresentation of fact.

V. Evidence And Conclusions of Law Regarding the Alleged Damages

A. The Bills

1. Exhibit P-7

Out of the bills listed in Exhibit P-7, only the October 23, 2001, ob/gyn bill incurred by Mrs. Haines for \$300.00 was also reported in the bills comprising Exhibit P-8. I will discuss it in the section relating to P-8. The other P-7 bills were all incurred before the cutoff date of November 30, 2001. Under “Charged Amount”, and excluding the October 23, 2001, ob/gyn bill, they total \$5,708.00.

As Kocher explained, the “Negotiated Amount” column reflected efforts by a PDI employee to contact the medical providers and compromise the bills. Kocher Testimony at 96-102. Kocher testified that most of these bills were not properly documented by Haines, but that PDI tried to settle them because it was trying to be helpful in light of its circumstances. Id. at 97-99, 102. I note that the bills could not have been negotiated with the health care providers, had the health care providers not confirmed the existence of the debts.

At trial, Kocher conceded in response to my questioning that she did not know now whether any of the health care providers would accept the negotiated amounts in full payment. Kocher Testimony at 97.

Finally, P-7 shows a “Deductible” column listing the amounts that Plaintiffs would have had to pay as deductibles under the applicable policies. They total \$247.47, without the \$10.00 deductible for the October 23, 2001, bill.

I will award Plaintiffs recovery for all of the bills listed in the letter from PDI dated January 4, 2006, and marked as Exhibit P-7, except for the \$300 ob/gyn bill, with which I deal separately below. It is clear that PDI accepted the existence of these debts as of January 4, 2006, and it has not shown that it obtained any evidence after that which would support its taking a different view at trial. In the absence of evidence that the health care providers would still accept the negotiated amounts, I will award Plaintiffs the full amount of each bill, minus the deductible. Accordingly, I will award Plaintiffs \$5,460.53 in connection with Exhibit P-7.

2. Exhibit P-8²

a. Bandon Community Ambulance Association

The first bill appearing in Exhibit P-8, and also marked as Exhibit D-7 is a bill for \$380.00, charged by Bandon Community Ambulance Association, Inc. for services provided on December 11, 2000. The bill reflects a payment of \$240.00 by Blue Cross and notes: “Shared service contract adj. Non-subscriber.” Defendants’ copy of the bill also bears a handwritten note, unidentified at trial, stating: “Said the ambulance service is non-participating and we are responsible for \$330 = (\$620 - 240).” At trial, Plaintiffs withdrew their claim of entitlement for reimbursement of this bill. Transcript at 66.

²Plaintiffs maintain that Defendants are precluded from denying the accuracy of P-8 because of their failure to respond to a Request for Admission on the subject. It is apparent that neither party followed Fed. R. Civ. Pr. 36 with respect to this Request; Defendants wrongly failed to respond to it, and Plaintiffs never sought to compel a response. It is also important to note that neither Defendant was represented by counsel until the day of trial. Mr. Peoples, who responded to the Requests for Admissions, simply admitted some, and failed to respond to the rest. Exhibit P-1. He may not have known this was improper or that it could result in an admission. I conclude that it would be unduly harsh to penalize the Defendants for what could simply have been a result of Peoples’ inexperience.

b. Lehigh Valley Health Network

Plaintiff has produced three different statements from Lehigh Valley Health Network, which includes Lehigh Valley Hospital, all dated February 4, 2007. The first, labeled a “Detailed Bill” reflects a charge of \$564.35. However, it also reflects a zero balance due, as well as a partial payment by Blue Cross. The second Detailed Bill lists many services, apparently associated with a three-day hospitalization for Mrs. Haines. It also lists a balance due of zero. The third bill, apparently for a surgery performed on Mrs. Haines, similarly shows a partial payment by Blue Cross, and concludes with balance due of zero.

Plaintiffs’ counsel stated at trial that, when the Blue Cross/Blue Shield policy was cancelled retroactively, Blue Cross/Blue Shield recouped the payments it had made to Lehigh Valley Health Network and the other medical care providers. Transcript at 60-64. Counsel stated that he chose not to “bring in twenty bill collectors or office managers” to prove this. Id. at 64. However, this left Plaintiffs with no evidence that moneys were actually returned. Neither Haines nor any other witness was able to testify to this. See Transcript at 86.

Two more statements, marked “Guarantor Bills” are for services incurred in January, April, July and August of 20002, all after the November 30, 2002, cutoff date. Kocher Testimony at 87-88; Exhibit P-28.

Plaintiffs have not shown that they were, or will be, billed for any amount from the Lehigh Valley Health Network, and they have admitted that they have never paid money to it. Accordingly, I am not able to make an award with respect to the Lehigh Valley Health Network statements.

c. Lehigh Valley Physicians Group

Plaintiff has provided three bills from the Lehigh Valley Physicians Group. The most recent, dated March 11, 2004, lists services provided by Dr. Bonafante on December 12, 2000; Dr. Bond on January 29, 2001; Dr. Karper on January 30, 2001; Dr. Sherman on March 9, 2001, March 22, 2001, and April 6, 2001; Dr. Lutz on April 4, 2002; and Dr. Lam on February 20, 2001, May 2, 2001, October 23, 2001 (this was the bill also listed in Exhibit P-7); December 27, 2001; January 15, 2002, and May 7, 2002.

Dr. Lutz's bill, and the last three bills for Dr. Lam, were for services provided after the November 30, 2001, cutoff date. Defendants have also shown that services provided on the two earlier bills from Lehigh Valley Physician Group were re-listed on the March 11, 2004, statement, and should not have been counted two or three times by the Plaintiffs.

Most importantly, however, as with the Lehigh Valley Health System bills, the March 11, 2004, mailing from the Lehigh Valley Physician's Group shows a zero balance. As above, Haines does not claim that he paid these bills, or that he was sued or that his credit was impaired by his failure to pay them. Plaintiffs showed no evidence that Lehigh Valley Health System has any plans to seek money from them in the future.

Further, all bills for services provided before November 30, 2001, reflect insurance payments, except for the October 23, 2001, bill from Dr. Lam, under which it is noted: "untimely filing write –". I cannot say what this note means, or whether it means that the practice wrote the bill off because it had filed the bill untimely. In any event, it did not result in any balance in the "patient" column.

Thus, just as with the Lehigh Valley Health Network statements, there is no evidence before me which would support an award respecting the Lehigh Valley Physicians Group.

d. Macungie Medical Group

As noted above, Haines asserts that he paid \$656.00 to the Macungie Medical Group, because it refused to treat his wife further until the bill was paid. He has provided a copy of the bill as part of P-8. However, the bill appears to be incomplete. It shows amounts totaling \$170.00 in the “patient” column, and zero in the “insurance” column; nevertheless, at the bottom of the page, there is a \$60.00 balance in the “patient” column, and a \$656.00 amount in the “insurance” column.

Kocher testified that PDI would not have paid this bill in its current form, since the \$656.00 charge is not substantiated. Kocher Testimony at 91. However, Defendants have not refuted Plaintiffs’ evidence that this was the amount they were forced to pay to obtain further services. This was clearly the amount which Macungie Medical Group, at least, considered the responsibility of the insurer. For that reason, Defendants are responsible for Plaintiffs’ expenditure, and I will award Plaintiffs the full \$656.00.

e. CVS Pharmacy

As part of Exhibit P-8, Plaintiffs have produced a \$22.38 bill from CVS Pharmacy, dated April 8, 2001. Defendants claim that this amount would have been part of Plaintiffs’ deductible. Kocher Testimony at 81-82. However, according to the IAA contract, which should have been in place during that time, the deductible for a generic drug (here, verapamil) was \$10.00. Exhibit D-5 at page 14 of Plan Document and Summary Plan Description.

There is no way to know whether CVS already subtracted the ten dollar co-pay from the amount it billed the Plaintiffs. Defendants have not shown that Plaintiffs had a prescription card which would have informed CVS of the deductible. Accordingly, I will award Plaintiffs \$22.38.

f. Dr. Jay Cohen

Haines has produced a \$690.00 bill from Dr. Jay Cohen for three root canals, as part of Exhibit P-8. PDI admits that it owes \$320.00 to Plaintiffs under the terms of its dental plan. It has produced a copy of this dental plan, which shows that 50% of an oral surgery is covered, and that a client would also pay a \$50 deductible. Kocher Testimony at 83; Exhibit D-3, page 16. On the basis of this evidence, I will award Plaintiffs \$320.00 with respect to this bill.

g. Quest Diagnostic

PDI has agreed to pay two bills in the amounts of \$30 and \$130, dated April 10, 2001 and April 16, 2001, respectively. Kocher Testimony at 98; Exhibit D-28. Two other Quest Diagnostic bills have dates of service of April 3 and 10, 2002, clearly after the November 30, 2001, cutoff date. I will award Plaintiffs \$160.00.

h. Health Network Laboratories

PDI has agreed to pay the \$283 billed by Health Network Laboratories for a service provided on October 23, 2001. Kocher Testimony at 82; Exhibit D-28. The Health Network Laboratory bill for \$19.25 which Haines paid is for a service provided on December 8, 2001; again, after November 31, 2001. Two more bills were also for services provided after the cutoff date; one for \$110, incurred on December 27, 2001; and another for \$32.45, incurred on May 7, 2002. Id. Therefore, I will award Plaintiffs \$283.00.

I. Medical Imaging of Lehigh Valley

PDI has agreed to pay the \$150 billed on the statement dated May 8, 2001. A second bill for \$19.40, which Haines claims to have paid, shows a date of service of April 5, 2002. Exhibit D-28. I will award Plaintiffs only \$150.00.

C. Insurance Premiums Wrongly Withheld

PDI has conceded that it accidentally withheld \$237.32 in insurance premiums for dental coverage from Mr. Haines's paycheck, after he no longer received dental benefits. Kocher Testimony at 93; Exhibit D-28. PDI has agreed to pay this amount. Id.

Nevertheless, I will not make an award in this regard. I have already awarded Plaintiffs exactly what they would have received for the root canal bill from Dr. Cohen if they had, indeed, held dental insurance. Therefore, a return of their premiums would result in an overpayment, placing Plaintiffs in a better position than they would have been in had their insurance been intact.

In summary, I will award the Plaintiffs \$6,768.91. In light of Defendants' blatant misrepresentations, and failure to pay the sums it now admits were due since 2001, I will, in my discretion, permit the Plaintiffs to file a petition requesting reasonable costs and attorney fees within thirty days of the date of these Findings of Fact and Conclusions of Law, and the attached Civil Judgment.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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VALARIE HAINES	:	
	:	
v.	:	
	:	
POLYMER DYNAMICS, INC. and	:	
WILLIAM PEOPLES	:	NO. 03-4088

CIVIL JUDGMENT

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: May 15, 2007

AND NOW, this 15th day of May, 2007, in accordance with this Court's Findings of Fact and Conclusions of Law filed this day, IT IS ORDERED that Judgment be and the same is hereby entered in favor of Plaintiffs Keith Haines and Valarie Haines in the amount of \$6,768.91.

Plaintiffs may file a petition to the Court requesting reasonable costs and attorney's fees within thirty days of the date of this Civil Judgment.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE